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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 23.08.2021

PRONOUNCED ON : 30.11.2021

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.Nos.37613 & 10948 of 2003 and
W.P.Nos.25822 & 25823 of 2006
and
W.P.M.P.No.13769 of 2003 & W.V.M.P.1884 of 2003
& M.P.No.1 of 2006

In W.P.No.37613 of 2003

K.N.Palanisamy ... Petitioner

Vs.

1.The Presiding Officer,
Labour Court,
Salem.

2.The General Manager,
Erode District Co-operative
Milk Producers Union Ltd.,
Erode. ... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the order dated 31.10.2002 passed by the first respondent in C.P.No.115 of 2000, insofar as declining to compute the difference in wages payable to the petitioner for the period from 01.12.1989 to 31.12.1993 and 01.06.1996 to 28.02.1997 and interest for the same, quash the same and consequently direct the second respondent to pay the petitioner Rs.54,888/- together with interest from the date of due to the date of payment at the rate of 12% per annum.

For Petitioner : Mr.V.Ajoy Khose

For Respondent :Mr.K.Elango
No.2

R1 : Labour Court

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In W.P.No.10948 of 2003

The General Manager,
Erode District Co-operative
Milk Producers Union Ltd.,
Vasavi College Post, Erode. ... Petitioner

Vs.

1.The Presiding Officer,
Labour Court,
Salem.

2.K.N.Palanichamy ... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the order of the first respondent in C.P.No.115 of 2000 dated 31.10.2002 and quash the same and consequently direct the second respondent to accept the wages on regularization from 04.01.2003, the date of his joining duty as Jr. Mazdoor.

For Petitioner : Mr.P.Narayanamoorthy

For Respondent No.2 : Mr.V.Ajoy Khose

R1 : Labour Court

In W.P.No.25822 of 2006

K.N.Palanisamy ... Petitioner

Vs.

1.The Presiding Officer,
Labour Court,
Salem.

2.Erode District Co-operative
Milk Producers Union Ltd.,
rep. by its General Manager,
Erode. ... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the order dated 28.03.2006 passed by the first respondent in C.P.No.303 of 2003, quash the same insofar as disallowing the claim for difference in wages and consequently direct the

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second respondent to pay the petitioner difference in wages together with interest at the rate of 12% per annum, award costs.

For Petitioner : Mr.V.Ajoy Khose

For Respondent :Mr.K.Elango
No.2

R1 : Labour Court

In W.P.No.25823 of 2006

K.N.Palanisamy ... Petitioner

Vs.

1.The Government of Tamil Nadu
rep. by its Secretary,
Animal Husbandry & Fisheries
Department, Fort St. George,
Chennai-600 009.

2.The Commissioner for Milk Production
& Daily Development,
Madhavaram, Chennai-600 051.

3.Erode District Co-operative
Milk Producers Union Ltd.,
rep. by its General Manager,
Erode. ... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to G.O.(Ms) No.146 dated 18.09.2000 passed by the first respondent and the consequential order dated 06.10.2000 passed by the second respondent in Na.Ka.No.9556/97/No.3 and the order dated 16.12.2000 passed by the third respondent in Na.Ka.No.067782/E3/Administration/2000, quash the same and consequently direct third respondent to confer the petitioner permanency as per the order dated 27.02.1997 passed by the authority under the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act with effect from 01.12.1989, with all consequential benefits, award costs.

For Petitioner : Mr.V.Ajoy Khose

For Respondent-1: Mr.K.V.Sajeev Kumar, SGP

For Respondent :Mr.K.Elango
Nos.2 & 3

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C O M M O N O R D E R

The present Writ Petitions are heard through Video Conferencing on 23.08.2021.

2. In all these Writ Petitions, the issue involved is, as to whether the workman is entitled to claim permanency with effect from the completion of 480 days in a period of 24 calendar months in accordance with the order of the authority under the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981 [hereinafter referred to as "the Act"] or whether the subsequent Government Orders regularizing the services of the workman from a different date, would prevail?

3. The workman namely, K.N.Palaniswamy herein had joined the services of the Management viz., Erode District Co-operative Society Milk Production on 25.06.1987 and on 27.02.1997, the authority under the Act had conferred permanency to the workman with effect from 01.12.1989 i.e., from the date of his completion of 480 days in 24 calendar months. On 18.09.2000, the Government had issued G.O.(Ms) No.146, Animal Husbandry and Fisheries Department, permitting the Management to regularize the workman, in continuation of which the Commissioner for Milk Production had issued orders on 06.10.2000, regularizing the petitioner/workman services with effect from the date of issuance of the said Government Order. In this background, the Management had passed an individual order dated 16.12.2000, granting permanency to the workman from 18.09.2000. This order dated 16.12.2000 came to be challenged by the workman in W.P.No.5293 of 2001 and this Court by its order dated 09.07.2001, dismissed the Writ Petition with liberty to the workman to challenge G.O.(Ms) No.146 dated 18.09.2000. In the meanwhile, based on a claim petition in C.P.No.115 of 2000, the Labour Court computed the difference in wages through its order dated 31.10.2002, by way of giving effect to the order of the authority dated 27.02.1997. The workman filed another claim petition in C.P.No.303 of 2003, claiming difference in wages subsequent of C.P.No.115 of 2000 and by an order dated 28.03.2006, the Labour Court dismissed the claim of the petitioner for the difference in wages. Both the Management and the workman have challenged the original order of the Labour Court passed in C.P.No.115 of 2000 dated 31.10.2002 in W.P.No.10948 of 2003 and W.P.No.37613 of 2003 respectively. The Government order in G.O.(Ms) No.146 dated 18.09.2000 and the subsequent orders of the Commissioner for Milk Production dated 06.10.2000 and the individual order of the Management dated 16.12.2000, giving permanent status to the workman from the date of the Government Order, is put under challenge in W.P.No.25823 of 2006.

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4. Section 3(1) of the Act confers a right to any workman, who is in of continuous service for a period of 480 days, within 24 calendar months in an industrial establishment, to claim permanency. The provision starts with a non obstante clause by excluding any law that may provide or hold any other mode of conferment of permanent status. Undisputedly, the term "any law" in Section 3(1) would include any Government Orders/ Circulars / Instructions, MoUs or any other Service Rules. This proposition has been affirmed and ratified in various decisions of this Court.

5. In A.Palanivel and two others Vs. Tamil Nadu Khadi and Village Industries Board, rep. by the Chief Executive Officer, Kuralagam, Madras-2 and another reported in 1998 Writ L.R. 271, it was held as follows:-

> "... A workman who has put in continuous service of 480 days in a period of 24 calendar months should be conferred the permanent status in the Establishment. The Act provides that period of interruption in service due to sickness or authorized leave or accident or a legal strike, lockout, lay-off effected under Standing Orders or under an agreement, etc., should be included in computing the days on which the workman has worked in the establishment. If during a period of twenty-four calendar months, for a period which does not exceed three months, a worker is not employed or discharged and in his place during such period a substitute is employed, such period should also be computed as days on which the workman has worked. Power is conferred on the State Government to apply the provisions of this Act, by Notification, to any industrial establishment employing such number of workmen less than fifty as may be specified in the Notification. Inspectors appointed under the Act have power to require any employer to supply or send any return or true copy of document or information relating to the provisions of the Act."

6. Likewise, in the case of The Tamil Nadu Civl Supplies Corporation Modern Rice Mill Engineering Section Employees Union, rep. by its Secretary, Sundarakottni Vs. The Tamil Nadu Civil Supplies Corporation, rep. by its Managing Director, Madras-2 & another reported in 1998 Writ L.R. 514, it was held that the workman, who have completed 480 days in 24 calendar months would be entitled for permanency status and that Section 3(1) of the Act would prevail over any law. While holding so, this Court had held that the Government Orders that deviates from the mandate under Section 3(1), is illegal and unlawful. The following are the extracts of such a

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proposition:-

> "11. Section 3(1), being a non obstante provision, it prevails over any law for the time being in force which includes any service rules, Government orders or Government instructions. Therefore, want of sanctioned posts as required under General Service Rules cannot take away the rights conferred under Section 3(1) of the Act Similarly, Government orders which require that the appointment should be made only through Employment Exchange also cannot be a ground to refuse the right provided under Section 3(1) of the Act of the petitioners (sic.) if they comply with the requirements prescribed under Section 3 (1). Therefore, it is not open for the respondent to take shelter under any other law in force much less any Government Orders, Government instructions to deny the benefits conferred under Section 3(1) of the Act, to the petitioners if they satisfy the conditions prescribed, therein, irrespective of the fact whether there are irrespective of the availability of sanctioned posts or sponsorship from Employment Exchange."

7. A similar view has been taken by a learned Single Judge of this Court in the case of Management Tamil Nadu State Transport Corporation (Madurai) Ltd., Vs. Labour Inspector and another reported in 2020 (2) LLJ 130 in the following manner:-

> "21. Reliance was placed on the memorandum of settlement under Section 12(3) of the I.D.Act, dated 25.09.1986 and in Clause-12 of the settlement, which deals with confirmation of temporary employees, in subclause (a), which deals with drivers and conductors, it has been agreed to that the services of the drivers and conductors will be confirmed after satisfactory completion of 240 days of actual work in a continuous period of one year. Similar condition is found in Clause-13 of the Settlement under Section 12(3) of the I.D.Act entered in the year 1992. 22. The contentions raised by Mr.Ajay Khose, learned counsel, stating that the provisions of the Act prevail over the settlement is right and this question has been decided in several matters and it would be beneficial to take note of the decision in Metal Powder Co. Ltd., Thirumangalam and another vs. the State of Tamil Nadu and another, reported in 1985 (2) LLJ 376, which was followed by the Division Bench of this Court in the Judgment dated 30.09.2019 in W.A.Nos.2871 and 2872 of 2018

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[The Managing Director, Tamil Nadu State Transport Corporation Ltd., vs. Shanmugam (died) and another]. 23. Similar issue was decided by us in favour of the workmen in the case of the Senior Regional Manager, Tamil Nadu Civil Supplies Corporation and another vs. The Joint Commissioner of Labour, Trichy, and others, W.A.(MD) Nos.353 to 357 of 2014, dated 12.03.2018."

8. Likewise, in the case of The Management Metropolitan Transport Corporation (Chennai) Ltd., Chennai-600 002 Vs. the The Inspector of Labour, Kancheepuram and 2 others passed in W.P.Nos.29149 & 29150 of 2017 dated 27.01.2020, it has been held as follows:-

"8. Perusal of Section 3 of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981, shows that every workman, who is in continuous service for a period of 480 days in a period of 24 calendar months in an Industrial Establishment shall be made permanent, not withstanding anything contained in any law for the time being in force. Explanation 2 to Section 3 of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981, further contemplates that "law includes any award, agreement, settlement, instrument or contract of service whether made before or after the commencement of this Act." Therefore, it is evident that even the appointment was made based on the contract of service, as in the present case, through the Government Order, such appointment cannot be a reason to deny the benefit of permanent status, if the workman otherwise had rendered continuous service for a period of 480 days in a period of 24 calendar months. In other words, any award, agreement, settlement, instrument or contract of service which may run contra to the benefit provided under Section 3 of the said Act, shall not stand against the Workman in getting the permanent status, if he satisfies the requirement under Sub-Section 1 of Section 3.

9. In 2019 (4) LLN 790 (DB) (Mad.), Management, Tamil Nadu State Transport Corporation (Madurai) Ltd., Vs. Labour Inspector, Virudhunagar and another, the Division Bench of this Court has considered the issue as to whether the settlement arrived under Section 12(3) of the Industrial Disputes Act, would stand against the Workman therein in getting their confirmation as provided under

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the relevant Statute. The Division Bench observed that the settlement cannot be relied on to deny the entitlement to the second respondent therein, since the settlement cannot override the provisions of the Act. At paragraph Nos. 17, 21, 22, 23, the Division Bench has observed as follows:

"17. The second contention raised before us is that the second respondent was only a reserve conductor and not a temporary conductor to be entitled for permanency. This argument is based upon the Section 12(3) settlements, dated 13.04.2015 and 04.01.2018. The completion of 480 days continuous employment in 24 calendar months by the second respondent was much prior to the settlement dated 13.04.2015, as the second respondent completed the required number of working days even in 2012. Therefore, those settlements cannot be relied on to deny the entitlement to the second respondent. Apart from that, a settlement cannot override the provisions of the Act.

.....

21.Reliance was placed on the memorandum of settlement under Section 12(3) of the I.D. Act, dated 25.09.1986 and in Clause-12 of the settlement, which deals with confirmation of temporary employees, in sub-clause (a), which deals with drivers and conductors, it has been agreed to that the services of the drivers and conductors will be confirmed after satisfactory completion of 240 days of actual work in a continuous period of one year. Similar condition is found in Clause-13 of the Settlement under Section 12(3) of the I.D. Act entered in the year 1992.

22. The contentions raised by Mr. Ajay Khose, learned counsel, stating that the provisions of the Act prevail over the settlement is right and this question has been decided in several matters and it would be beneficial to take note of the decision in Metal Powder Co. Ltd., Thirumangalam and another vs. the State of Tamil Nadu and another, 1985 (2) LLJ 376, which was followed by the Division Bench of this Court in the Judgment dated 30.09.2019 in W.A. Nos. 2871 and 2872 of 2018 [The Managing Director, Tamil Nadu State Transport Corporation Ltd. vs. Shanmugam (died) and another].

23. Similar issue was decided by us in favour of the workmen in the case of the Senior Regional Manager, Tamil Nadu Civil Supplies Corporation and another vs. The Joint

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Commissioner of Labour, Trichy, and others, W.A.(MD) Nos. 353 to 357 of 2014, dated 12.03.2018.""

9. In the light of the decisions extracted above, the legal proposition has been clearly laid down to the effect that under Section 3(1) of the Act, the workman would be entitled for permanent status, immediately after the day of his completion of 480 days of continuous service, within 24 calendar months and any contrary law including Awards, Memorandum of Settlements, Government Orders etc., cannot override the provision under Section 3(1) of the Act.

10. In this background, when the facts of the present case were looked into, it is seen that the Authority under the Act, had through the order dated 27.02.1997, had conferred permanent status to the workman with effect from the day succeeding his completion of 480 days. It is claimed that the workman would thus be entitled for permanency from 01.12.1999, which is the day after completion of his 480 days. The order of the authority has become final, since the Management have not opted to challenge the same. Consequently, it requires to be held that the workman would be entitled for the difference in wages from 01.12.1999 onwards.

11. The Management attempted to take shelter under the order dated 09.07.2001 passed in W.P.No.5293 of 2001, whereby the workman's prayer for quashing the Management's order dated 16.12.2000, granting permanent status with effect from 18.09.2000, was dismissed. The Labour Court in its order dated 28.03.2006 passed in C.P.No.303 of 2003, had also relied upon the order of the Writ Court dated 09.07.2001 and had observed that the order has not been challenged by the workman and thereby denied the claim of the workman. I am not in agreement with such a submission of the Management, as well as the observation of the Labour Court.

12. This Court had dismissed the workman/petitioner's claim, challenging the Management's order dated 16.12.2000, on the ground that such an order was in consequence to the Government Order in G.O.(Ms) No.146, dated 18.09.2000 and since the workman had not challenged the Government Order, the Writ Petition itself was not maintainable. However, while dismissing the Writ Petition, this Court had granted liberty to the workman to challenge the Government Order in G.O.(Ms) No.146, dated 18.09.2000 in the following manner:-

> "3. Aggrieved by the act of the first respondent in regularizing the service of the petitioner from 18.09.00, the petitioner had filed the present Writ Petition with a prayer a confer permanent status with effect from 01.12.1989. The impugned order is only a consequential order to the Government Order in G.O.(Ms) No.146 dated 18.09.00. Unless or

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otherwise the Government Order dated 19.09.00 is challenged and consequentially set aside, the present order which is impugned in the Writ Petition cannot be challenged by the petitioner. Hence, the present Writ Petition is dismissed and it is open to the petitioner to challenge the Government Order G.O.(Ms) No.146 dated 18.09.00, if he so advised. No costs."

While passing the aforesaid order, this Court had neither dismissed the Writ Petition on the merits of the case, nor had rendered its views on the sanctity of the Management's order dated 16.12.2000. In other words, the dismissal was merely on a technical aspect and by extending liberty to the workman. It is pursuant to this liberty that the workman had challenged G.O.(Ms) No.146, dated 18.09.2000, as well as the consequential orders in one of these Writ Petitions in W.P.No.25823 of 2006. Thus, the stand taken by the Management, as well as the reasoning adopted by the Labour Court by placing reliance on the order of this Court in W.P.No.5293 of 2001 and dismissing the claim of the workman/petitioner towards difference in wages, cannot be sustained.

13. Thus, the Government Order in G.O.(Ms) No.146, Animal Husbandry and Fisheries Department, dated 18.09.2000 and the order of the Commissioner for Milk Production dated 16.10.2000, insofar as it relates to the workman namely, K.N.Palanisamy is concerned, stands quashed. So also, the impugned order passed by the Management dated 16.12.2000, granting permanent status to the workman with effect from 18.09.2000, stands quashed. Consequently, the Management is directed to confer permanent status to the workman with effect from 01.12.1989 and thereby disburse the difference in wages to the workman, by computing the same from 01.12.1989, within a period of four weeks from the date of receipt of this order. In view of the aforesaid order, the order of the Labour Court dated 31.10.2002 passed in C.P.No.115 of 2000, insofar as it declines the difference in wages, is quashed. Likewise, the Labour Court's order dated 28.03.2006 passed in C.P.No.303 of 2003, is also quashed. All these Writ Petitions stand ordered accordingly. Consequently, the connected Miscellaneous Petition(s) is/are quashed. There shall be no orders as to costs.

Sd/-
Assistant Registrar(CS-VII)

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Sub Assistant Registrar

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To

1.The Presiding Officer,
Labour Court, Salem.

2.The Secretary,
Government of Tamil Nadu
Animal Husbandry & Fisheries
Department, Fort St. George,
Chennai-600 009.

3.The Commissioner for Milk Production
& Daily Development,
Madhavaram, Chennai-600 051.

4.The General Manager,
Erode District Co-operative
Milk Producers Union Ltd.,
Erode.

+1cc to Mr.V.Ajoy Khose, Advocate SR.No.62130

W.P.Nos.37613 & 10948 of 2003 and
W.P.Nos.25822 & 25823 of 2006
and
W.P.M.P.No.13769 of 2003
& W.V.M.P.1884 of 2003
& M.P.No.1 of 2006

KV(CO)
GMY(06/12/2021)

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